



Agenda Date: 3/27/00

Agenda Item: 8B

**STATE OF NEW JERSEY**

***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION )  
FOR AN ORDER AUTHORIZING NEW )  
EDGE NETWORK, INC. D/B/A NEW EDGE )  
NETWORKS TO PROVIDE SWITCHED )  
AND DEDICATED RESOLD AND )  
FACILITIES-BASED, INTEREXCHANGE )  
AND LOCAL EXCHANGE TELECOMMUNI- )  
CATIONS SERVICES THROUGHOUT )  
NEW JERSEY )

ORDER OF APPROVAL

DOCKET NO. TE99100774

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated October 1, 1999, New Edge Network, Inc., d/b/a New Edge Networks, (New Edge or Petitioner) filed a petition with the Board of Public Utilities (Board) requesting authority to provide all forms of switched and dedicated, resold and facilities-based, interexchange and local exchange services, including carrier access services throughout the State of New Jersey, and approval of its initial tariff. The Petitioner's request for local exchange tariff approval has been separately docketed at No. TT99100777 and remains pending at the Board. Petitioner also submitted a Motion for approval of a protective order related to its financial information contained in Exhibit 2 to the petition. In addition, New Edge submitted responses to Staff interrogatories by letters dated November 12 and December 7, 1999, and a response to a Staff questionnaire on November 17, 1999.

According to the petition, New Edge is a privately-owned company organized under the laws of the State of Delaware, formed on June 1, 1999 and its principal offices are located at 3000 Columbia House Boulevard, Suite 106, Vancouver, Washington 98661. Petition at 3-4. Petitioner submitted copies of its Certificate of Incorporation, Delaware Certificate of Good Standing and its New Jersey Certificate of Authority to operate as a foreign corporation. Id. at 4, Exhibit 1 and Letter dated December 7, 1999. By letter dated November 12, 1999, Petitioner stated that it is not currently providing service in any jurisdiction but does have certification to provide local exchange and interexchange services in the States of Colorado, Kansas, Kentucky, New York, Oregon, Rhode Island, Texas, Washington and Wisconsin. According to the petition, New Edge is seeking local exchange and interexchange authority in all fifty states. Petition at 6. New Edge also advised that due to recent reevaluation of its business plan, it has withdrawn its application in the District of Columbia without prejudice. November 12, 1999 Letter at 2. In addition, Petitioner advised that it has not been denied authority in any jurisdiction. Petition at 6. New Edge advised that it has not signed an interconnection agreement with any incumbent local exchange carrier in New Jersey. November 17, 1999 Letter at 3.

Petitioner requested a waiver of N.J.A.C. 14:1-5.11(a) (5), which requires that petitions for approval of initial tariffs include the filing of pro forma income statements for each of the first two years of

operations and actual or estimated balance sheets at the beginning and the end of each year of said two-year period. Petition at 4. Subsequently, by letter dated November 12, 1999, Petitioner withdrew its request and submitted the pro forma income statements for its first two years of operations in New Jersey. Petitioner also requested relief from its obligations under N.J.A.C. 14:1-4.3, which requires that its books and records be maintained in accordance with the Uniform System of Accounts (USOA). New Edge stated that in the interest of efficiency and because Petitioner's services are competitive and will not be subject to rate of return regulation, it will maintain its records in accordance with Generally Accepted Accounting Principles (GAAP). Id. at 5. In addition, pursuant to N.J.A.C. 14:1-5.15(a), Petitioner also requested a waiver of Board rules, which require New Edge to keep its books and records in New Jersey. New Edge stated that for efficiency and cost saving reasons, it seeks approval to maintain its books and records outside of New Jersey at its corporate offices in Vancouver, Washington. Petitioner also stated it will produce its books and records at such time and place within New Jersey as the Board may designate, and will pay any reasonable expenses for investigation or examination of the records. Ibid.

In its petition, New Edge advised that it seeks statewide authority to provide all forms of switched and dedicated, resold and facilities-based, interexchange and local exchange telecommunications services, including carrier access throughout the State of New Jersey. Id. at 1. New Edge stated that it initially intends to target small and medium sized business customers, Internet service providers, other competitive local exchange carriers, small office/home office customers and other customers with a need for high bandwidth Internet access and/or data transport services. November 12, 1999 Letter at 3. New Edge also advised it does not plan to provide local exchange telecommunications services in the service areas of small or rural LECs in New Jersey, but as market conditions warrant it may expand its services. Petition at 1. According to the petition, New Edge intends to offer local exchange services to customers located in all exchanges in New Jersey.

Petitioner stated that its exchange services may include, but will not be limited to the following: (i) local exchange access services to single-line and multi-line customers (including basic residential and business lines, direct inward/outward PBX trunk service, Centrex services and ISDN); (ii) local exchange usage services to customers of New Edge's end user access line services; and (iii) switched and special carrier access services to other common carriers. Id. at 7. New Edge also seeks authority to provide digital subscriber loop services, by leasing local loops of ILECs and CLECs currently in New Jersey. In addition, New Edge through interconnection with other carriers intends to offer 911 and enhanced 911 emergency services, directory assistance and operator assisted calling, dual party relay services and other miscellaneous services currently provided by incumbent local exchange carriers. Ibid. According to the Petition, New Edge also intends to provide interexchange services throughout the State of New Jersey, including both inbound and outbound intraLATA services. This will be accomplished through a combination of its own facilities and through the resale of the facilities of other certified carriers. Ibid.

New Edge asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Id. at 8. In addition, New Edge asserted that intrastate offering of these services is in the public interest because the services will provide New Jersey customers with access to new technologies and service choices and can permit customers to achieve increased efficiencies and cost savings. According to the petition, New Edge's entry into the intrastate telecommunications markets will enhance the telecommunications infrastructure in the State of New Jersey and will facilitate economic development. Ibid.

In support of its managerial qualifications, New Edge stated that it possesses the managerial qualifications to provide its proposed telecommunications services, and to operate and maintain New Edge's facilities over which such services eventually will be deployed. Id. at 6. Petitioner submitted the biographies of its management team, which according to New Edge, demonstrate extensive experience in the telecommunications industry. Id. at 6, Exhibit 3. New Edge also asserted that it is technically qualified to operate and manage its telecommunications operations in

the State of New Jersey. Id. at 6. According to the petition, New Edge plans to install state-of-the-art telecommunications equipment in the central offices of incumbent local carriers and lease fiber-optic network infrastructure which will be able to provide trunking facilities to the incumbent local exchange carrier and/or New Edge's Internet service provider and competitive local exchange carrier customers. Ibid. New Edge also stated that as each customer is obtained, service will be provisioned by leasing unbundled loops or other facilities from the ILECs to connect the end user to New Edge's network. Id. at 6-7.

With regard to its financial qualifications, New Edge stated that it is financially qualified to render its proposed telecommunications services. Id. at 4. New Edge has submitted financial statements for the period ended July 31, 1999, which include balance sheets, statements of operations, statements of cash flows and statements of changes in shareholders equity. Id. at Exhibit 2. Petitioner stated that it is a privately held corporation and its financial statements are not a part of the public record in any jurisdiction. Therefore, New Edge has submitted a motion for a protective order to limit the availability of proprietary information contained in Exhibit 2. Petitioner stated that the information contained in Exhibit 2 is highly sensitive, confidential and proprietary business information. New Edge stated that disclosure of the proprietary information would result in an unfair competitive advantage to New Edge's competitors as such competitors could ascertain New Edge's financial capacity through the use of this information. Motion at 1. In addition, by letter dated November 12, 1999, New Edge has filed its pro forma income statements for the first two years of operations in New Jersey. Letter at 2, Exhibit A. Petitioner has requested that the Board grant protective treatment of Exhibit A because these documents contain confidential proprietary information concerning New Edge's proposed operations in New Jersey and is not available to the public. Ibid.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of New Edge's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to a demonstration of financial, technical and managerial integrity.

In considering this application, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed New Edge's petition and the information supplied in support thereof, the Board FINDS that New Edge has demonstrated that it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES New Edge to provide switched and dedicated resold and facilities-based, interexchange and local exchange telecommunications

service in New Jersey subject to approval of its tariff. The Board notes that New Edge will not be able to provide telecommunications services until its tariff (Docket No. TT99100777) is approved by the Board. The Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief, pursuant to N.J.A.C. 14:1-1.2(b) and N.J.A.C. 14:1-5.15(a), from its requirements to maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide its books and records to the Board upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation of those books and records, the Board APPROVES New Edge's request for the exemptions from maintaining its books and records in New Jersey and under the USOA. With regard to New Edge's financial information, the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 1:1-14.1, that the information contained in Exhibit 2 to the petition and in Exhibit A to the November 12, 1999, response to Staff is sensitive financial information which merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that the information contained in Exhibit 2 to the petition and in Exhibit A to the November 12, 1999, response to Staff be kept under seal.

DATED: 3/29/00

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
HERBERT H. TATE  
PRESIDENT

ATTEST:

(signed)  
CARMEN J. ARMENTI  
COMMISSIONER

(signed)  
EDWARD D. BESLOW  
ACTING BOARD SECRETARY

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER